



**Montana Department of
ENVIRONMENTAL QUALITY**

EXHIBIT 1
DATE 4-2-07
SB 446

Brian Schweitzer, Governor

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SB 446

**Department of Environmental Quality Testimony
House Natural Resources Committee
April 2, 2007**

BACKGROUND

PWS Review Exemption

The Water Quality Act requires a permit for the discharge of sewage or industrial wastes to state waters. The Water Quality Act and rules adopted there under do not require an engineering review or an approval of plans and specifications for a public wastewater system that must obtain discharge permit. The Public Water Supply Act, however, requires public wastewater systems to meet certain engineering design standards as adopted by the Board of Environmental Review in Circulars DEQ-2 (Municipal Wastewater) and DEQ-4 (Subsurface Wastewater Systems).

In a 1995 amendment to various statutes an exemption in the requirements for a review was incorporated into the Public Water Supply Act:

"...However, any facility reviewed by the department under Title 75, chapter 5, (Water Quality Discharge Permits) is not subject to the provisions of this section."

At that time it was believed that the reviews performed under the Water Quality Act and separately under the Public Water Supply Act were duplicative and unnecessary. In addition, industrial discharges which did not co-mingle with domestic sewage were also subject to review under the Public Water Supply Act even though the state's adopted design standards did not directly apply to industrial discharges.

The Department believes both Public Water plan and specification review and Water Quality discharge permitting are important functions necessary to protect public health and the environment when domestic sewage is involved. While the Water Quality permit assures that the discharge into state waters will not significantly impact or degrade the quality of the water, the Public Water review assures that the system is adequately sized, constructed to standard specifications, and adequately operated to safely meet the treatment capacity needed for the protection of public health.

Despite the exemption in the statute, most systems that fall under this category are still reviewed by the department. Larger municipal wastewater systems usually obtain funding assistance or low-interest loans to pay for construction from state and federal funding programs. Under the funding requirements, these discharging facilities are required to comply with the design standards and are given an engineering design review that the Public Water Supply Act exemption would otherwise, not require. Additionally, there are other regulations that specifically require proposed wastewater systems to meet the engineering standards established through the Public Water Supply Act even though the Act itself would appear to exempt them.

With this bill the Department proposes to change the statute to accurately reflect what the current practice is for systems involving domestic type sewage. However, purely industrial waste systems will continue to be exempt from the Public Water Supply Act, but will still be required to obtain a Water Quality Act discharge permit.

Technical and Managerial Capacity at Water Systems

The Environmental Protection Agency requires DEQ to certify we have authority to adopt capacity development rules that pertain to financial, technical, and managerial functions at public drinking water systems. The penalty for failure to certify this authority is significant reduction in federal grant to the state for Drinking Water State Revolving Funds that are used to help fund water system improvements. The authority in state law to adopt financial capacity rules is clear. The authority to adopt rules pertaining to technical and managerial functions at water systems is not. A legal review of the statutes indicates that authority to adopt rules for technical and managerial function can be argued to exist; however, it is not intuitive and clear. DEQ Legal Counsel advises that if the department proposes other changes to the Public Water Supply Act as we are in this bill, we include amendments to expressly add rulemaking authority for technical and managerial functions.

Surface Water Source Protection

The original Montana Wellhead Protection Program was developed to meet the requirements of the 1986 federal Safe Drinking Water Act (SDWA) that pertained to the protection of drinking water wells. In 1996, amendments were made to the federal Act to develop the program into a mechanism for the protection of ALL public drinking water sources. The term "source water" is reflective of the broader application of the program that now includes both surface water and ground water. From a practical standpoint, the proposed change reflects that source water protection is applied to all sources of drinking water and not just well water. Approximately three-percent of public water supplies are from surface water sources.

SECTION-BY-SECTION DESCRIPTION

Section 1 amends 37-42-102 (6) and (7) by adding definitions of "Industrial waste" and "Industrial waste discharge system" to the Water and Wastewater Treatment Plant Operator Act. These definitions were previously included in this Act by reference to 75-6-102, but will be deleted with this bill. They must be re-inserted in 37-42-102 to retain the requirement for operator certification for industrial wastewater treatment plants.

Section 2 amends 75-6-102 by changing the definition of "certified wellhead protection area" to "certified source water protection area" to allow for voluntary protection programs of surface water as well as groundwater systems (see Section 6)

Section 2 also removes the definition of "industrial water discharge system". The requirement for plan and specification review of "industrial waste discharge system" will be deleted from 75-6-112 with this bill so the definition is no longer necessary.

Section 3 amends 75-6-103 by allowing the Board of Environmental Review to adopt rules and standards for the review of the technical and managerial capacity of a proposed public water or wastewater system as opposed to solely financial capacity.

Section 4 amends 75-6-104 to remove "industrial waste" from Department authority and responsibility under the Public Water Supply Act.

Section 5 amends 75-6-112 by removing prohibitions from the Public Water Supply Act duplicated in the Water Quality Act.

Section 5 also removes the exemption from plan and specification review of facilities subject to WQA permitting.

Section 6 amends 75-6-120 by changing references of "Wellhead protection program" to "Wellhead and source water protection program" to allow for voluntary protection programs of surface water as well as groundwater systems.